No. 3088.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

CHEW HOY QUONG,
Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, California,
Appellee.

In the Matter of the Application of Chew Hoy Quong for a Writ of Habeas Corpus, for and on Behalf of His Wife, Quok Shee.

BRIEF FOR APPELLANT.

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STATEMENT OF THE CASE.

This is an appeal from an order of the District Court of the United States, in and for the Northern District of California, denying the petition for writ of *habeas corpus,* and sustaining the return thereto. (Trans., p. 28.)

Chew Hoy Quong is a person of Chinese descent with the status of a merchant, which he has held for

twenty odd years past. On May 15th, 1915, he departed from the United States for China and while there, on February 21st, 1916, was married according to the Chinese custom to Quok Shee.

Chew Hoy Quong and Quok Shee left China for the United States and arrived at the port of San Francisco, September 1st, 1916. Chew Hoy Quong was admitted forthwith as a returning merchant, which status has never been questioned by the immigration authorities. His wife, Quok Shee, made application for admission to the United States as the wife of her merchant husband, Chew Hoy Quong. On September 5th, 1916, a hearing was had before the examining inspector at Angel Island to consider the grounds of her claim. After a full hearing the examining inspector reported favorably as to the admission of Quok Shee.

For some unknown reason a rehearing was ordered by the Commissioner of Immigration, and on September 13th her right to admission was denied, the finding being that her relationship to her husband had not been properly established. An appeal was taken to the Secretary of Labor at Washington, D. C., who subsequently ordered Quok Shee deported. On November 24th, 1916, a petition for a writ of *habeas corpus* was filed in the District Court for the Northern District of California, based upon grounds other than herein involved. The petition was denied and an appeal taken to the Circuit Court of Appeals where the lower court was sustained and a rehearing denied.

Before this appeal was perfected it was stipulated by and between the United States attorney and counsel

for appellant that the original records of the proceedings held before the immigration authorities at Angel Island should be transferred to this Court in their original form and be considered a part of the transcript of record. References will be made to the transcript of record in the following manner (Transcript, p. ...), and to the immigration records as (Record, p. ...).

ARGUMENT.

Our argument for the issuance of the writ may be divided under two heads.

1. When notice of appeal was filed from the decision of the Commissioner of Immigration at Angel Island the then attorneys of record for Quok Shee were denied the right to interview the applicant. The purpose of the interview was to consult her and discover if she had further evidence to offer in support of her appeal.

2. That the Department at Angel Island received confidential reports relative to Quok Shee, which were withheld from the attorneys of record, who were thereby unable to meet the questions involved on appeal to the Secretary of Labor and that the said Quok Shee was denied her right of appeal.

That the District Court was in error when they denied the petition for a writ of *habeas corpus* and sustained a return thereto and that the error consisting in not ordering a trial *de novo* when the traverse to the return was filed and questions of fact arose.

I.

We base our first contention as to the refusing the right of interviewing the applicant, after notice of appeal had been filed from the decision of the Commissioner of Immigration at Angel Island, on the case of

Mah Shee, by Chun Leong, vs. *Edward White etc.,* No. 2946, 242 Federal, 868,

which is absolutely in point and the facts are identical with this case. The attorneys in the Mah Shee case were the same as in the Quok Shee case at Angel Island. On page 9 of the Transcript the following appears as a communication from the Commissioner of Immigration to the attorneys for the applicant:

"15530/6-29.

Sept. 26, 1916.

Messrs. McGowan and Worley,
Attys. at Law,
Bank of Italy Bldg.
San Francisco.

Sirs: Replying to your communication of the 23d and 25th inst., in re Quok Shee alleged wife of a merchant ex. S. S. 'Nippon Maru,' Sept. 1, 1916, you are advised that your request for reopening in that case contained in the letter first above mentioned must be denied for the reason that there is no apparent ground for the assumption that any contradictory statements appearing in the record were due to a misunderstanding of the questions propounded, and that the affidavit of the alleged husband is not new evidence within the meaning of the regulations.

The request contained in the 2d above mentioned letter that you as counsel and the alleged husband be permitted to interview the applicant

as a basis for the introduction of further evidence in support of her appeal must also be denied there being no authority in either the law or regulations for the granting of such a request.

Respectfully,

.....,

Acting Commissioner.

WHW/ASH."

The Mah Shee case contained just such a letter as above quoted. This Court held that such an order deprived an applicant of a full and fair hearing and constituted an unfair hearing, saying:

"If new evidence has been discovered favorable to the applicant, or if evidence in addition to that which has been brought out at the hearing is in her possession or in the possession of her counsel she may present or submit the same for consideration to the Secretary of Labor. Now, it being her right to submit such additional or further evidence, the applicant is in no position to avail herself of its benefit unless she can communicate with her counsel who read the testimony contained in the record of exclusion, to the end that by affidavit or supplementary statement she may set forth the new or additional evidence upon which she may rely. To hold that a Chinese woman should make the showing herself would be absurd, and moreover, every rule of fair procedure would indicate that the presentation of such new evidence to be considered on appeal, may be by the applicant's counsel. We therefore think that when counsel for Mah Shee requested an interview with the applicant as a basis for the introduction of further evidence in support of her appeal they but asked for an opportunity whereby she might be able to avail herself of a right recognized by the regulations as belonging to her, and that denial of the request so made, deprived her of a fair, though

summary hearing according to the law and the regulations of the department."

We consider that this decision sustains our first contention and will add nothing further in the way of argument other than to call the Court's attention to the original letter contained in the Immigration Records. (Record, p. 50.)

II.

In the amendment to the petition of the writ of *habeas corpus* found in the Transcript, p. 11, and particularly at p. 12, the allegations are there set out that in the case of Lee Tong Shee, numbered 15530/6-30 of the Nippon Maru and in which a writ of *habeas corpus* had been granted by the District Court in an action known as 16204, that confidential matter was considered in that case and in this case now before the Court as is shown by the numbers set forth at p. 12 of the Transcript. This case of Quok Shee was known to the immigration authorities by the numbers of 15530/6-29 and 54176-61. The allegations referred to show that the Commissioner of Immigration actually had this confidential matter before him, considered the same and forwarded it to the Secretary of Labor. They also stated that for the bureau's information of the confidential matter they should see case number 54176-61, which is this case, and they thereby tacitly admit that the confidential report was part of the record. It follows quite clearly and logically that this applicant was deprived of her right of appeal

because this confidential report was withheld from the attorneys for Quok Shee and they were unable on appeal to meet the facts of the case, as they were undisclosed. Under the rules and regulations governing the admission of Chinese, particularly calling the Court's attention to rule 5, subdivisions b and c, in which it is stated that the attorneys are entitled to see all evidence and testimony adduced in the case. It was an arbitrary decision on the part of the immigration authorities at Angel Island to withhold this report and contrary to the above referred to rule. How could an appeal be intelligently presented when, first, the immigration authorities refused to permit the attorneys of record to interview the applicant for the purpose of discovering if she had additional evidence to offer in support of her appeal, and, secondly, when the immigration authorities, as they actually did, withhold a portion of the record? The attorneys are entitled to know what was the basis of the decision and what questions they have to meet on appeal and the withholding of the same thereby renders the appeal of Quok Shee abortive. Such conduct must strike this Court as being highly unfair. As to the District Court denying the writ, when this point was brought to its attention it was decidedly a mistake of law and as the question was directly raised by the amendment to the petition, the return and traverse thereto, the District Court should have ordered a trial *de novo* to determine this fact.

In conclusion, therefore, it appears from the memoranda quoted in the amendment to the petition, that

information was included in the record which the Department regarded as confidential and therefore denied applicant's counsel the right to examine it, but that *information* was *evidence* adduced in the matter of the hearing of this case before the Department and, under rule 5, subdivision b of the rules governing the admission of Chinese, applicant's counsel had the unqualified right of examining the same, despite the fact that the Department regarded it as confidential.

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